



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER OF
PATENTS AND TRADEMARKS
Washington, D.C. 20231

Paper No. 41

COPY MAILED

ENZO THERAPEUTICS, INC.
ENZO BIOCHEM, INC.
527 MADISON AVENUE, 9TH FLOOR
NEW YORK, NY 10022

JAN 11 2000

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

In re Application of	:	
Brakel, et al.	:	
Application No. 08/479,999	:	ON PETITION
Filed: June 28, 1994	:	
Title: Modified Nucleotide Compounds	:	

This is a decision on the petition under 37 C.F.R. § 1.137(b), filed November 19, 1999, to revive the above-identified application.

The petition is **dismissed**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

This application became abandoned for failure to timely reply within three months to the Office action mailed January 4, 1999. Accordingly, this application became abandoned on April 5, 1999. A Notice of Abandonment was mailed on August 19, 1999.

Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing

application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant petition does not satisfy requirements (3) and (4) above.

With regards to requirement (3):

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The instant petition to revive does not contain the required statement.

With regards to requirement (4):

Since the above-identified application is a utility or plant application filed before June 8, 1995, 37 CFR 1.137(c) requires a terminal disclaimer dedicating to the public a terminal part of the term of any patent granted on the above-identified application or any patent granted on any continuing application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the above-identified application. The period to be disclaimed will be a terminal part of the patent to be granted equivalent to the period of abandonment. The period of abandonment will be computed to be the number of months from the date of abandonment to the date of filing a grantable petition. A terminal disclaimer fee of \$55 is required. If the terminal disclaimer is signed by an assignee, the assignee must comply with the requirements of 37 CFR 3.73(b). The appropriate forms are attached for petitioner's convenience.